

SERVED: May 3, 1994

NTSB Order No. EA-4155

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 18th day of April, 1994

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| STEVEN D. HOLLOWAY, |) | |
| |) | |
| Applicant, |) | |
| |) | |
| v. |) | |
| |) | Docket 137-EAJA-SE-11543 |
| DAVID R. HINSON, |) | |
| Administrator, |) | |
| Federal Aviation Administration, |) | |
| |) | |
| Respondent. |) | |
| |) | |

OPINION AND ORDER

The Administrator has appealed from the initial decision issued by Administrative Law Judge William E. Fowler, Jr., on May 5, 1992. In that decision, the law judge granted, in large part, Mr. Holloway's application for EAJA¹ fees and expenses. We reverse the award, and dismiss the application. We agree with the Administrator that the Board lacked jurisdiction to hear the

¹Equal Access to Justice Act, 5 U.S.C. 504.

application, as it was late-filed, and that the Administrator's failure to appeal the law judge's earlier ruling on this point (see decision of March 12, 1992)² does not preclude the Board from dismissing the application now.

The law judge's March order held simply that the "interest of fairness, equity, and the ends of justice" directed denial of a motion by the Administrator to dismiss the application. Although that motion to dismiss argued that the application was untimely filed and that, under the statute, it must be dismissed, the law judge did not discuss this claim. We find it a compelling one.

EAJA, at § 504(a)(2), reads, as pertinent:

A party seeking an award of fees and other expenses shall, within thirty days of a final disposition in the adversary adjudication, submit to the agency an application

Waiver of sovereign immunity "must be strictly construed in favor of the sovereign" and not "enlarged beyond what the statute requires. Escobar v. U.S. I.N.S., 935 F.2d 650 (4th Cir. 1991).

Expansion of statutory time limits amounts to an enlargement of the waiver of sovereign immunity. Monark Boat Co. v. NLRB, 708 F.2d 1322 (8th Cir. 1983). In light of this analysis, the courts have uniformly held that EAJA'S 30-day time limit is jurisdictional and may not be waived. Monark, supra; Sonicraft, Inc. v. NLRB, 814 F.2d 385 (7th Cir. 1987); Columbia Mfg. Corp. v. NLRB, 715 F.2d 1409 (9th Cir. 1983).

²Both the law judge's decisions are attached.

There is no question but that the application was filed late. Under the statute, the application was due "within thirty days of a final disposition in the adversary adjudication." The application here was filed on January 30, 1992. Applicant does not disagree with the Administrator's contention that the "final disposition" of the adversary adjudication was December 30, 1991, the service date of the order dismissing the Administrator's withdrawn appeal. Thirty days from December 30, 1991 is January 29, 1992.³ Applicant's arguments invoking the Board's rules and precedent, as well as equitable considerations, are unavailing in light of the clear precedent in this area.⁴ The application must be dismissed.

In light of our disposition, we need not address applicant's two supplemental filings, seeking additional fees and expenses and an increase in the fee ceiling.⁵

³Applicant admits that he may have failed to calculate the due date properly. Reply at 12-13.

⁴Thus, for example, our rules may not enlarge our jurisdiction under the statute. Sonicraft, supra; Columbia, supra.

⁵We also need not and will not address the Administrator's extensive criticisms of the substance of the law judge's fee award. In light of our recent suggestions that the Administrator is not objecting when he should to the details and amount of these EAJA applications (see, e.g., Gay v. Administrator, NTSB Order EA-3763 (1993) at footnote 16), we acknowledge the Administrator's attention to such matters in this case.

ACCORDINGLY, IT IS ORDERED THAT:

1. The initial decision is reversed; and
2. The EAJA application is dismissed with prejudice.

COUGHLIN, Vice Chairman, LAUBER and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order. VOGT, Chairman, and HALL, Member, did not concur.